

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

Ohio Farmers Insurance Co.,
Petitioner,

v

MTT Docket No. 321930

Bureau of Tax Policy,
Respondent.

Tribunal Judge Presiding
Jack Van Coevering

FINAL OPINION AND JUDGMENT

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S MOTION TO CONSOLIDATE

I. INTRODUCTION

Petitioner, Ohio Farmers Insurance Company, seeks a refund for taxes paid in excess for its Michigan retaliatory tax as calculated by the Bureau of Tax Policy, Respondent, during the 2004 tax year. On October 26, 2006, Respondent filed motions to consolidate and dismiss. It appears to the Tribunal that the latter motion's caption was intended to be a Motion for Summary Disposition brought under MCR 2.116(C)(8), which entitles the moving party to summary disposition when the opposing party fails to state a claim upon which relief may be granted. Petitioner has not filed a response to the Motion.

II. FINDINGS OF FACT

The appeal is for a non-property tax assessment. Petitioner is an Ohio insurance company conducting business in Michigan. Petitioner is subject to taxation by the State of Michigan for its business activities. Petitioner filed amended tax returns for the 2004 tax year claiming single business tax credits to offset its Michigan retaliatory tax liability. Petitioner anticipated a tax refund of \$2,231.00. Respondent found and adjusted inaccuracies in

Petitioner's tax return. As a result of the adjustment, no refund was issued to Petitioner. On March 7, 2006, Respondent sent Petitioner notice of the adjustment. On March 28, 2006, Petitioner appealed Respondent's adjustment to the Michigan Tax Tribunal.

III. PETITIONER'S CONTENTIONS

Petitioner has not filed a response to Respondent's Motion for Summary Disposition. However, in the Petition, Petitioner contended that (i) "[w]e disagree with the decision to disallow the refund as indicated on the Notice of Adjustment dated March 7, 2006," (ii) "[t]his return was amended due to an error in the retaliatory calculation on the return filed February 25, 2005," (iii) "tax credits allowed and taken on Michigan's Form 1366, line 17a-e were disallowed by Michigan Department of Treasury in the retaliatory tax calculation (column B, line 44)," (iv) "[b]ased on the decision by the Michigan Court of Claims involving Prudential Insurance Company of America v. Department of Treasury . . . the Department of Treasury's method of calculating Michigan's Retaliatory Tax . . . is contrary to the compatible legislative purposes of the retaliatory tax and the single business tax credit statutes," (v) "[i]t was the opinion of the Court that the Department of Treasury's position represents a discriminatory system under which the credits promised by the Michigan Legislature to both domestic and foreign companies are denied only to foreign companies," (vi) "[t]he effect of the Department's interpretation is that the incentives otherwise offered by the Michigan Legislature to all insurance companies through credits against the single business tax are cancelled under the retaliatory tax, but only for foreign insurance companies," (vii) "[d]ue to opinion of the Court of Claims in Prudential Insurance Company of America v. Department of Treasury and our interpretation of Michigan law, we contest the Department's decision to disallow the refund request for Ohio Farmers Insurance Company and respectfully request this issue be reconsidered."

IV. RESPONDENT'S CONTENTIONS

In support of its Motion for Summary Disposition, Respondent contends (i) "Petitioner has failed to state a claim upon which relief can be granted," (ii) "*Prudential Insurance Co of America v Dep't of Treasury* . . . has been overruled by the Michigan Court of Appeals and decided in the Department's favor," (iii) "[t]he Court of Appeals held that the SBT and the retaliatory tax are two different taxes, calculated independently of each other, and without reference to each other," (iv) "[u]nder the Court of Appeals ruling, Petitioner is not allowed to use SBTA credits in calculating its Michigan retaliatory tax."

V. APPLICABLE LAW

A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. *Beaudrie v Henderson*, 465 Mich. 124, 129. "The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted. The motion should be granted if no factual development could possibly justify recovery." *Id.* at 129-130.

This Tribunal has considered Respondent's Motion for Summary Disposition under the criteria for MCR 2.116(C)(8), and granting this motion is warranted based on the pleadings and other documentary evidence filed with the Tribunal. Thus, no factual development could possibly justify recovery, and Petitioner has failed to state a claim upon which relief can be granted.

Furthermore, the Tribunal agrees with Respondent's contentions that single business tax credits may not be used in calculating retaliatory tax liabilities. Under Michigan's retaliatory tax scheme, foreign insurers must pay the greater of the Michigan Single Business Tax (SBT) or the amount a similar Michigan insurer would face in the home of the foreign insurer. MCL

500.476a, MCL 500.476b. Logically, SBT credits apply only where the SBT applies; that is, where the foreign insurer is paying the SBT because that tax is greater than the amount the foreign insurer would pay in its home state. Such a scheme does not offend the equal protection clauses. *TIG Ins Co Inc v Dep't of Treas*, 464 Mich 548, 558-559, 629 NW2d 402 (2001). It is impermissible for a foreign insurer to take SBT credit against the obligations it would be required to pay in its home state, that is, against the Michigan retaliatory tax. *Prudential Prop & Cas Ins Co v Dep't of Treas*, 272 Mich App 269, 725 NW2d 477 (2006).

VI. JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion for Consolidation is DENIED.

MICHIGAN TAX TRIBUNAL

Entered: February 23, 2007

By: Jack Van Coevering